THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33177 of 1997

Dated : 12.03.2007

Between:

H.Lingappa S/o Patha Lingappa and another.

… **PETITIONERS**

And:

The Special Commissioner, Land Revenue,
Andhra Pradesh, Hyderabad and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33177 of 1997

ORDER:

This writ petition is filed seeking to quash the order of the first respondent dated 05.08.1997, whereby the first respondent reversed the order dated 21.05.1994 passed by the second respondent cancelling the assignment granted in favour of the fourth respondent in respect of the land admeasuring Acs.5.40 cents in Sy.No.17-1A of Kekathi village.

The first petitioner, husband of the second petitioner, by name Sana Pathanna, and the fourth respondent are brothers and members of

a joint family. The fourth respondent was the manager of the joint family. Originally, the land admeasuring Acs.5.40 cents in Sy.No.17-1A of Kekathi village was assigned in favour of the fourth respondent by the erstwhile Tahsildar, Madakasira, by his proceedings dated 13.12.1955, he being the manager of the joint family. At the time of

assignment, the first petitioner and the said Sana Pathanna were minors and the fourth respondent was managing the said property. Thereafter, all the three brothers divided their respective shares and were enjoying the same. While so, in the year 1993 the fourth respondent objected the first petitioner and the said Sana Pathanna from enjoying the said land. Hence, they filed a petition before the third respondent for cancellation of the assignment granted in the year 1955 and for issuing fresh assignment in respect of the respective land in possession of each member. The third respondent conducted enquiry and basing on his report, the second respondent issued a show cause notice to the fourth respondent calling upon him to explain as to why the assignment granted earlier shall not be cancelled. Accordingly, the fourth respondent submitted his explanation. The second respondent, after considering the explanation of the fourth respondent, cancelled the assignment granted in his favour, vide proceedings dated 21.05.1994, and further directed the third respondent to assign the land according to the possession and enjoyment of the three brothers. Aggrieved thereby, the fourth respondent filed an appeal before the first respondent, and the first respondent, without assigning valid reasons, reversed the order of the second respondent, vide his proceedings dated 05.08.1997. Hence, this writ petition.

The respondents filed a counter stating that the land in question was originally assigned in favour of the fourth respondent thirty years prior to its cancellation, and the fourth respondent was cultivating the same, and thus the question of shivaijama cultivation does not arise.

Having heard both the counsel this Court is of the view that the first respondent has erred in holding that the land in question should not have been divided, having regard to the fact that the fourth respondent was assigned the said land thirty years prior to its cancellation, and hence he is in occupation of the said land. In fact, in

the counter it is stated that the petitioners and the fourth respondent are in possession of the said land and the land was assigned in favoaur of the fourth respondent as he being the manager of the joint family at the time of assignment. Subsequently, as the petitioner and the said Sana Pathappa became majors, the said land was divided into three parts and the petitioners were ordered to be granted assignment, which in my considered view does not appear to be wrong.

For the foregoing reasons, the writ petition is allowed setting aside the order, dated 05.08.1997, passed by the first respondent. There shall be no order as to costs.

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12.03.2007

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